

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 16 OF 2015

DUNCAN KIBET KIRONG.....PLAINTIFF

VERSUS

CONSOLIDATED BANK (K) LTD.....1ST DEFENDANT

PROTUS WANGA T/A TIMELESS

DOLPHIN AUCTIONEERS.....2ND DEFENDANT

LOMSON ENTERPRISES LTD.....3RD DEFENDANT

RULING

The issue before court is who is to pay costs. The plaintiff submits that he was the successful party and therefore, should be awarded costs. According to the plaintiff, costs follow event and are normally in the court's discretion. The plaintiff argues that were it not for the defendants' action of advertising for sale, the plaintiff's property that necessitated the filing of this suit to restrain the defendants from advertising for sale his parcel of *land No. Kapseret/Lemook and Chepkatet Block 1(Inder) 418* without following the laid down procedures in law, then the plaintiff would not have brought this suit.

The defendant submits that the suit took a different course out of negotiation in good faith that resulted in a consent that allowed two more parties to join the suit as co-plaintiffs and the debt was assigned to them. According to the defendant, the plaintiff admitted indebtedness and therefore, should pay costs.

I have considered the rival submissions of parties and do find that this case was not determined on merit. It is difficult to find that either the plaintiff or defendant was successful party as their evidence was not tested. It is not possible to ascertain that the defendants followed the right procedure in exercising statutory power of sale, however, it is evident that the debt had not been repaid in full and that the borrower was in arrears.

In such matters, the court is called upon to ensure that before the chargee exercises his statutory power of sale, sections 90 and 96 of the Land Act has been complied with. In this case, parties decided to compromise the suit before the court could ascertain who is on the wrong.

Ultimately, the court finds that in such a situation, each party should bear own costs.

DATED AND DELIVERED AT ELDORET THIS 31 DAY OF MARCH, 2017.

A. OMBWAYO

JUDGE